COVENANT FOR TITLE—WAY OF NECESSITY AS AN INCUMBRANCE.—Defendant conveyed a farm by warranty deed to the plaintiff without mentioning the fact that a third party claimed a way of necessity over a portion of the same. This fact did not appear in the abstract and plaintiff had no knowledge of it until after the sale had been consummated. Plaintiff brought suit, based upon the covenant against incumbrances in the warranty deed, to recover damages. *Held,* there was an implied reservation in the deed with reference to the way of necessity and that it was not an incumbrance. *Reed* v. *Blum,* (1921) 215 Mich. 247.

The principal case is based on a line of cases which hold that a deed of warranty does not estop the grantor to claim a way of necessity over the land granted. *Schmidt* v. *Quinn,* 136 Mass. 575; *Brigham* v. *Smith,* 4 Gray (Mass.) 297; *New York & New England Railroad Co.* v. *Railroad Com'r,* 162 Mass. 81. In this connection, and on such facts, courts have indulged in general expressions to the effect that ways of necessity are not incumbrances. These statements were seized upon by the court in the principal case and applied to a situation having nothing in common with the circumstances of the cases from which the statements were taken. A careful examination of these cases shows that the main question before the court was that of construction of the deed. And they have uniformly held that a way of necessity is an exception to the rule that deeds are construed in accordance with their terms,—that the generality of the covenant is limited and qualified by the nature of the estate conveyed. Such reasoning has no application to the situation in the principal case, where the main question is not that of construction of a deed but whether a way of necessity constitutes an incumbrance. An easement, generally speaking, is an incumbrance, as for instance, in the case of a private right of way over the land conveyed. *Blake* v. *Everett et al,* 1 Allen (Mass.) 248; *Wilson* v. *Cochran,* 46 Pa. St. 229. And it makes no difference whether the easement arose by operation of law, without the voluntary agreement of the servient owner. Railroad rights of way are generally considered incumbrances. *Beach* v. *Miller,* 51 Ill. 206; *Quick, Adm.* v. *Taylor,* 113 Ind. 540. Tax liens, though arising by operation of law, are held to be incumbrances. *Almy* v. *Hunt,* 48 Ill. 45; *Eaton* v. *Chesebrough,* 82 Mich. 214. Also, dower rights. *Walker* v. *Deaver* 79 Mo. 664; *Bigelow* v. *Hubbard,* 97 Mass. 195. By analogy it would seem that a way of necessity, although arising by implication of law or fact, should be held to be an incumbrance. It is surprising that the court in the principal case has arrived at a decision for which there is no support in decided cases or in principle.

CRIMINAL LAW—ASSAULT WITH INTENT TO KILL—INTENT.—The defendant shot at A with the intention of killing him, but accidentally hit and wounded B. He was indicted for an assault with intent to kill B. *Held,* defendant was properly convicted under the indictment. *Jones* v. *State* (Texas, 1921), 231 S. W. 122.

The principal case raises the question whether in the crime of assault with intent to kill, intent and violence must coëxist in respect to the person assaulted. It answers in the negative. "The assault is only required to be

with an intent to kill; that is an intent to kill someone." Quoted with approval from *Mathis* v. *State*, 39 Tex. Cr. App. 549. In charging an assault with intent to kill, where by statute a specific intent is made a part of the crime, undoubtedly that intent must be proved. Under such a statute A, intending to shoot B, but accidentally shooting C, cannot properly be convicted of an assault on C with intent to kill C. *State* v. *Mulhall*, 199 Mo. 202; *People* v. *Keefer*, 18 Cal. 637; Ann. Cas. 1912A, 1063, note; *contra, Callahan* v. *State*, 21 Ohio St. 306. Cases in which A shoots at C, supposing him to be B, should be distinguished, for here there is a specific intent to kill the person assaulted. *McGehee* v. *State*, 62 Miss. 772; *People* v. *Torres*, 38 Cal. 141. But where, as in the principal case, the statute by its terms makes criminal an assault with intent to kill, and does not expressly restrict the intent to kill to the person assaulted, A, intending to shoot B, but accidentally wounding C, may be convicted of an assault on C with intent to kill. *Mathis* v. *State, supra*, 37 L. R. A. (n. s.) 172, note. The indictment in the principal case transcends the statutory requirement and restricts the intent to the person assaulted, and therefore, on principle, it would seem that an intent to kill the person injured is of the essence of the crime charged and should be proved. *State* v. *Shanley*, 20 S. D. 18. In view of the indictment, the effect of the court's decision is to treat the restrictive allegation as mere surplusage.

CRIMINAL LAW—EVIDENCE OF OTHER OFFENSES SHOWING SYSTEM.—In a prosecution for larceny of a brooch, evidence was offered that the witness who had pawned this brooch for the defendant had similarly pawned other jewelry for him. There was no evidence as to where the defendant had obtained such other jewelry except some articles which, it appears, had been taken from the store from which the defendant was accused of taking the brooch, though in effect the defendant admitted that all the jewelry was stolen. The evidence of pawning the other jewelry for the defendant was *held* admissible to show a system under which his operations were conducted. *McClelland* v. *State* (Md. 1921), 114 Atl. 584.

One of the exceptions to the rule excluding proof of extraneous crimes is when the other acts are so connected by common features as to indicate a plan. I WIGMORE ON EVIDENCE, §346. But "there must be such a concurrence of common features that the various acts are naturally to be explained as caused by a general plan of which they are individual manifestations." *ibid.*, §304. A person who commits one crime may be more likely to commit another, yet, logically, one crime does not prove another and cannot be shown, unless there is a certain relation existing between them. *Jaynes* v. *People*, 44 Colo. 535. Disagreement as to whether such relation exists, and the confusing of evidence of system with evidence to show intent, motive, absence of mistake, and identity, has caused a seeming conflict in the decisions. See *People* v. *Molineux*, 168 N. Y. 264, 62 L. R. A. 193; *State* v. *Gillies*, 40 Utah 541, 43 L. R. A. (n. s.) 776. Evidence of other crimes tends to confuse the defendant in his defense, raise a variety of issues, and be highly prejudicial to him. *Com.* v. *Jackson*, 132 Mass. 16; *State* v. *Hyde*,